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SUBJECT: U.S.-INDIAN RELATIONS: CLEARING THE BRUSH

**¶1.** SUMMARY: (SBU) In advance of the April 24 Interagency Meeting to discuss India policy, Mission offers its views on the next steps that should be taken to move the relationship forward in the near term. We are focused on high priority items whose resolution will lay the groundwork for a stronger and more comprehensive relationship that furthers cooperation on a host of bilateral, regional and global issues. This is one of two cables; the other cable will assess the existing bilateral dialogues. End summary.

REACHING BOOST PHASE

**¶2.** (SBU) The U.S.-India relationship has undergone a rapid transformation that will have a profound positive impact on global security, stability, and prosperity in the 21st century. Our two democracies share a wide range of values and interests which have laid the basis for a dynamic political and economic partnership. While India's election and the shape of the next government will affect the pace of development of bilateral ties, there is a momentum in the relationship that should carry it forward. We will need to be patient not just as India's new coalition government sorts out its priorities, but also because India rarely shares Americans' sense of urgency to close deals, large and small. Therefore, we need to engage as early as we can on select initiatives to achieve results. We believe that broadening and deepening our ties will help the U.S. and India to work together to address issues of shared concern including terrorism, nuclear nonproliferation, climate change and economic growth and opportunity.

LEGACY ISSUES

**¶3.** (SBU) During recent years, progress in building cooperative relationships was made across-the-board in areas as diverse as agriculture, military sales and public health. While the successful U.S.-India Civil Nuclear Agreement received the lion's share of the attention, scores of other diplomatic dialogues took shape and concrete results were achieved in a wide range of sectors. However, in order to capitalize on existing gains while seeking new avenues for cooperation, we need to focus on resolving several items of unfinished business immediately. In each case outlined below, we identify the outstanding issue, describe the state-of-play and what actions are pending, and suggest channels for resolution. The prompt settlement of these issues will clear the way to focus on the next stage of closer bilateral ties.

Six Month Plan

**¶4.** (SBU) In order of priority, these issues require attention:

-- Defense Technology Transfer (EUM)

An End Use Monitoring (EUM) Agreement is a congressionally mandated requirement for U.S. high tech defense sales that restricts the use of weapons in broad terms and prevents unauthorized technology transfer through inspections. The Indian side has resisted agreement terms that address use or inspection of transferred items.

We have clearly notified the Indians that we have reached our red lines, and that it is up to them to either accept the language for an agreement that we have offered, or formulate language which they can use. However, any language the GOI comes up with must be consistent with U.S. law, i.e., it needs to have explicit language to permitting the U.S. to "see" items if asked and preventing transfers of items from intended use/purchaser to another without prior permission. In recent months, we have seen a growing acceptance on the Indian side that the U.S. cannot and will not negotiate away these legal requirements. However, Foreign Secretary Menon signaled that because this is such a sensitive matter of national pride, we cannot expect a resolution until the next Indian government has settled in.

Action: The ball is in India's court with Ministry of Defense's Director General (Acquisition) and Ministry of External Affairs [MEA] Joint Secretary (Americas) for action. Will require Cabinet Committee on Security [CCS]-approval/concurrence.

-- Civil Nuclear Agreement Implementation

Full implementation of bilateral civil nuclear cooperation will require progress on four issues.

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(1) Safeguards Agreement: India must (i) bring the Safeguards Agreement into force (by sending a letter notifying the IAEA that its constitutional requirements for entry into force have been met), and (ii) make a declaration of safeguarded facilities that is not "materially inconsistent" with the 2005 Separation Plan. The President must certify to Congress that these two conditions have been met before the Nuclear Regulatory Commission (NRC) can issue export licenses to U.S. firms.

Action: The MEA could choose to do this at any time. We have not yet heard a compelling rationale for the delay and will press in New Delhi for early action.

(2) Liability Protection: India needs to ratify the Convention on Supplementary Compensation for Nuclear Damage.

Action: Indian Officials say it will be taken up by the next Parliament, probably in June-July.

(3) Reactor Park Site Designation: FS Menon has privately shared that U.S. firms will get one site in Andhra Pradesh and another site to be determined, though not in West Bengal.

Action: Indian officials say they must complete a politically complex process of consultations with states, which are competing to host sites, and that there is little appetite to do this prior to elections.

(4) Reprocessing Arrangement: Dick Stratford (ISN) is in touch with MEA Joint Secretary Gitesh Sharma about consultations on reprocessing "arrangements and procedures" under article 6 Section 3 of the 123 Agreement. The negotiation must begin by August 3 and conclude within one year.

Action: Further progress will require agreement by both the U.S. and GOI on the consultation process. We are committed to concluding formal consultations with India on a reprocessing arrangement within the timeline established by the 123 Agreement.

-- Mumbai New Consulate Compound (NCC) Construction:

Work on the last new structure on the NCC compound, now scheduled for completion in December 2009 (nearly two years late), has stopped for lack of a "joint plinth inspection" from the Mumbai municipal authorities. According to our municipality contacts, the MEA has instructed them to stonewall routine technical procedures for the construction of the NCC. The Chief of Protocol and Joint Secretary of the Americas at the MEA have openly linked further progress at the NCC with resolution of the New York property tax case against India and settlement of a dispute over utility bills and tax assessments in Mumbai. Senior managers in State have found an administrative solution to the New York case, but it was not approved prior to the end of the Bush Administration. Clearance within the new administration is underway.

The tax case is scheduled to be heard on appeal on May 18, at which time legal briefs from all parties will be required. Meanwhile, the NCC contractor is now assessing penalties against the USG of an estimated \$10,000/day. Conversely, any cost to the GOI from taxes is only "theoretical", since it will not pay tax whatever the outcome of the New York case (only if the GOI tried to sell its building in Manhattan would the city have leverage to collect). We find the "reciprocal" actions of the MEA to be grossly unbalanced, heavy-handed. We need the MEA to give the green light to the Mumbai authorities so that we can complete the NCC.

Action: Action is with State. The Under Secretary for Management is seeking to have the administrative solution approved prior to the May 18 hearing. We are also pressing here to break the inappropriate linkage between the Mumbai construction and the New York taxes.

#### -- US-India Bilateral Investment Treaty

Two-way investment has risen significantly in recent years and India is emerging as a source, as well as a destination, of foreign investment in the world. Both sides view the Bilateral Investment Treaty (BIT) as an important step in further facilitating investment flows between the countries. Exploratory talks on a Treaty were held in 2008, during which both sides saw merit in proceeding to formal negotiations -- even though our initial positions and model texts are quite different. After a policy review in January and February by the new Administration, USTR and Department of State's

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Economic Bureau (co-leads on bilateral investment treaty negotiations) informed the Government of India of their readiness to launch negotiations on a bilateral investment treaty as soon as possible. We are waiting to hear from the Ministry of Finance, which leads a multiple-agency group for India, how soon dates could be scheduled to launch talks. We would like to begin negotiations as soon as possible; MOF recently told us negotiations will likely have to wait until after the national elections are completed in mid-May.

Action: USG should propose dates for negotiations for sometime between mid-May and mid-June.

#### -- US-India Commercial Space Launch Agreement (CSLA)

With the exception of implementing the U.S.-India civil nuclear agreement, the CSLA is the one remaining item uncompleted from the Next Steps in the Strategic Partnership (NSSP). After a two-year hiatus in consultations, the U.S. and India held a video conference on April 16 to discuss a roadmap for completing an agreement. Both sides agreed to consider an exchange of letters that would allow us to immediately implement the Technical Safeguards Agreement (TSA) that would permit India to launch U.S.-origin satellites or satellites with U.S.-origin components for non-commercial purposes. At the same time, we would begin negotiations on a CSLA to extend the agreement to launches of commercial satellites, as well as regular consultations on commercial satellite markets in the U.S. and India.

Action: USG should prepare and present proposed side letter to GOI before the end of April.

-- VISAS Mantis

This is an issue that has been both a bilateral irritant, and is a significant impediment to cooperation between the U.S. and India. Nowhere in the world are person-to-person ties more important to the United States than in India, whose economy forms a significant part of the world's growth, whose students are the largest from any country, and whose U.S. visa operation is the second largest in the world (after Mexico).

Visa processing requirements implemented in the wake of 9/11 have made our country safer, but with an associated opportunity cost. Despite our best efforts, legitimate travelers are sometimes delayed. In India, we are working hard to give all travelers prompt and predictable access to visa services. But there are limits to what we can do - particularly in key industries. For example, because India is a nation of proliferation concern, additional clearances are required for almost all Indian travelers who work in high-technology fields or have high-tech backgrounds.

The result of these restrictions is that important travelers are being delayed and critical meetings cancelled. There is no doubt that we are losing friends and business opportunities because of our lengthy clearance procedures.

While the State Department's visa processing system can deal with the vast quantities of data in just minutes, some other agencies who review visa clearances do so manually. Routinely, travelers' cases have been held up for months and years awaiting resolution. Processing times for VISAS Mantis cases right now are being held up for two or three months.

Action: The ball is in the US court - State/CA and interagency process needs to find a resolution.

-- Communications Interoperability Security Memorandum of Agreement (CISMOA)

We need this Agreement to sell or transfer encrypted communications equipment, such as military-specifications Global Positioning Systems [GPS], radars, radios, etc, legally. Acceptable language was included in draft document agreed to with the Defense Ministry and initialed. The draft can be signed by a Joint Secretary-level individual on the Indian side and a Colonel/Navy Captain-level on our side.

Action: Ball is in India's court with the need for a signature by Ministry of Defense Joint Secretary (Planning & International Cooperation). This would require a Cabinet Committee on Security approval/concurrence. The GOI is well aware of what the agreement covers, but have been squeamish about the perception of entering into a "security agreement" with the U.S. Some contacts have

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suggested this will be the second security agreement India will sign, after EUM.

-- Logistics Support Agreement

This Agreement has been frozen for years, but in theory should be easy for the Indians to accept. It is essentially authorizes an accounting process to allow for shared military support services and supplies. A misconception which has existed on the Indian side -- that LSA somehow give the U.S. access to Indian bases and the like -- has perpetuated opposition to LSA. There is agreed language in draft document with the Defense Ministry which has been initialed. An agreement can be signed by a Joint Secretary-level individual - Colonel/Navy Captain-level signs on our side.

Action: Ball in India's court with Ministry of Defense's Joint Secretary (Planning & International Cooperation) for signature. Signature will require Cabinet Committee on Security approval/concurrence. Supposedly this will come after EUM and CISMOA.

-- Nonproliferation: Proliferation Security Initiative (PSI)

Indian officials have confirmed that they are ready to engage with us on President Obama's nonproliferation agenda and that the ball is in our court to tell them specifically what we want to talk about, where, and when. Indian officials in Delhi have been dropping hints the last few months that they may be willing to sign up for the Proliferation Security Initiatives (PSI). PSI is fundamentally a set of principles about maritime interdiction of nuclear materials. India became a member of the Global Initiative to Combat Nuclear Terrorism (GICNT) last year, but has refrained from joining PSI due to its basis in the Safety of Life at Sea (SOLAS) Convention and the lack of U.S. ratification of the UN Convention on the Law of the Sea. India will not change its position before the new government is in place, but given the international makeup of PSI, it should not be controversial for the Indians in the end.

Action: Embassy New Delhi. We will engage the Indians on PSI and press for their joining.

BURLEIGH